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Attorneys for Plaintiffs and Counter-Defendants
ASUSTeK Computer, Inc. and ASUS Computer International

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ASUSTEK COMPUTER, INC., and
ASUS COMPUTER INTERNATIONAL,

Plaintiffs/Counter-Defendants,

v.

INTERNATIONAL BUSINESS MACHINES
CORPORATION,

Defendant/Counter-Plaintiff.

AND RELATED COUNTERCLAIMS.

Case No. C08-1168-MMC

REPLY TO COUNTERCLAIMS

DEMAND FOR JURY TRIAL

Plaintiffs/Counter-Defendants ASUSTeK Computer, Inc. and ASUS Computer
International (collectively "ASUS") hereby reply to the counterclaims of Defendant/Counter-
Plaintiff IBM as follows.

1. ASUS admits the allegations of paragraph 17 of the counterclaims.

2. ASUS admits the allegations of paragraph 18 of the counterclaims.

3. ASUS admits the allegations of paragraph 19 of the counterclaims.

4. ASUS admits the allegations of paragraph 20 of the counterclaims.

REPLY TO FIRST COUNTERCLAIM

(Alleged Infringement of U.S. Patent No. 5,008,829)

5. ASUS admits the allegations of paragraph 21 of the counterclaims.

6. ASUS admits that the first page of the '829 patent lists an issue date of April 16, 1991, a title "Personal Computer Power Supply," and names Roger L. Cox, Michael J. DeLoye and Robert L. Meyers. Except as admitted, ASUS denies the allegations of paragraph 22 of the counterclaims.

7. IBM's allegations of paragraph 23 of the counterclaims are simply a denial, written in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of the '829 patent, and, therefore, ASUS denies the allegations of paragraphs 23. Further, ASUS incorporates by reference paragraphs 1-16 of the Complaint.

8. IBM's allegations of paragraph 24 of the counterclaims are simply a denial, written in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of the '829 patent, and, therefore, ASUS denies the allegations of paragraph 24. Further, ASUS incorporates by reference paragraphs 1-16 of the Complaint.

9. IBM's allegations of paragraph 25 of the counterclaims are simply a denial, written in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of the '829 patent, and, therefore, ASUS denies the allegations of paragraph 25. Further, ASUS incorporates by reference paragraphs 1-16 of the Complaint.

REPLY TO SECOND COUNTERCLAIM

(Alleged Infringement of U.S. Patent No. 5,249,741)

10. ASUS admits the allegations of paragraph 26 of the counterclaims.

11. ASUS admits that the first page of the '741 patent lists an issue date of October 5, 1993, a title "Automatic Fan Speed Control," and names William R. Bistline, William C. Johnson,

1 and James M. Peterson. Except as admitted, ASUS denies the allegations of paragraph 27 of the
2 counterclaims.

3 12. IBM's allegations of paragraph 28 of the counterclaims are simply a denial, written
4 in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of
5 the '741 patent, and, therefore, ASUS denies the allegations of paragraph 28. Further, ASUS
6 incorporates by reference paragraphs 1-16 of the Complaint.

7 13. IBM's allegations of paragraph 29 of the counterclaims are simply a denial, written
8 in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of
9 the '741 patent, and, therefore, ASUS denies the allegations of paragraph 29. Further, ASUS
10 incorporates by reference paragraphs 1-16 of the Complaint.

11 14. IBM's allegations of paragraph 30 of the counterclaims are simply a denial, written
12 in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of
13 the '741 patent, and, therefore, ASUS denies the allegations of paragraph 30. Further, ASUS
14 incorporates by reference paragraphs 1-16 of the Complaint.

15 **REPLY TO THIRD COUNTERCLAIM**

16 **(Alleged Infringement of U.S. Patent No. 5,371,852)**

17 15. ASUS admits the allegations of paragraph 31 of the counterclaims.

18 16. ASUS admits that the first page of the '852 patent lists an issue date of December
19 6, 1994, a title "Method and Apparatus for Making a Cluster of Computers Appear as a Single
20 Host on a Network," and names Clement R. Attanasio and Stephen E. Smith. Except as admitted,
21 ASUS denies the allegations of paragraph 32 of the counterclaims.

22 17. IBM's allegations of paragraph 33 of the counterclaims are simply a denial, written
23 in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of
24 the '852 patent, and, therefore, ASUS denies the allegations of paragraph 33. Further, ASUS
25 incorporates by reference paragraphs 1-16 of the Complaint.

26 18. IBM's allegations of paragraph 34 of the counterclaims are simply a denial, written
27 in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of
28

1 the '852 patent, and, therefore, ASUS denies the allegations of paragraph 34. Further, ASUS
2 incorporates by reference paragraphs 1-16 of the Complaint.

3 19. IBM's allegations of paragraph 35 of the counterclaims are simply a denial, written
4 in the affirmative, of ASUS' allegations seeking declaratory relief regarding non-infringement of
5 the '852 patent, and, therefore, ASUS denies the allegations of paragraph 35. Further, ASUS
6 incorporates by reference paragraphs 1-16 of the Complaint.

7 **AFFIRMATIVE DEFENSES**

8 20. In addition to affirmative defenses described below, ASUS specifically reserves the
9 right to allege additional affirmative defenses as they become known.

10 **FIRST AFFIRMATIVE DEFENSE**

11 **(Invalidity)**

12 21. The '829 patent, the '741 patent, and the '852 patent are invalid because they fail to
13 comply with the requirements of 35 U.S.C. § 101 et seq., including, without limitation, §§ 102,
14 103 and 112.

15 **SECOND AFFIRMATIVE DEFENSE**

16 **(Unenforceability – Express or Implied License)**

17 22. On information and belief, IBM's claims are barred in whole or in part pursuant to
18 an actual license or under the doctrine of implied license.

19 **THIRD AFFIRMATIVE DEFENSE**

20 **(Unenforceability - Patent Exhaustion/First Sale Doctrine)**

21 23. IBM is barred in whole or in part by the doctrine of patent exhaustion/first-sale
22 doctrine from enforcing the '829 patent, the '741 patent and the '852 patent against ASUS.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs/Counter-Defendants ASUS pray for judgment as follows on
25 IBM's Counterclaims:

26 (1) That IBM's Counterclaims be dismissed with prejudice and that IBM take nothing
27 by reason of its Counterclaims.
28

1 (2) That ASUS does not infringe and has not infringed, directly or indirectly, the '829
2 patent, the '741 patent, and the '852 patent;

3 (3) That the '829 patent, the '741 patent', and the '852 patent are invalid;

4 (4) That the '829 patent, the '741 patent, and the '852 patent are unenforceable;

5 (5) That IBM, and all persons acting on its behalf or in concert with it, be permanently
6 enjoined and restrained from charging, orally or in writing, that any of the '829 patent, the '741
7 patent, and the '852 patent is infringed by ASUS, directly or indirectly.

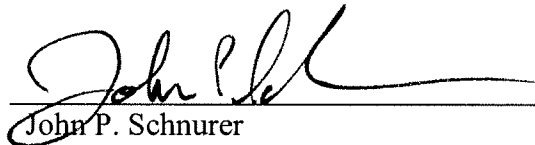
8 (6) That ASUS be awarded its costs, expenses and reasonable attorney fees in this
9 action; and

10 (7) That ASUS be awarded such other and further relief as the Court may deem
11 appropriate.

12
13 DATED: May 9, 2008

FISH & RICHARDSON P.C.

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15 By:


John P. Schnurer

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17 Attorneys for Plaintiffs and Counter-
18 Defendants ASUSTeK Computer, Inc. and
19 ASUS Computer International
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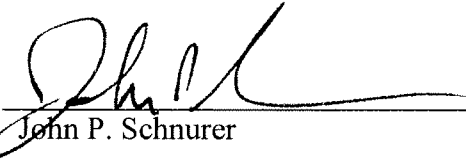
DEMAND FOR JURY TRIAL

Plaintiffs/Counter-Defendants ASUS hereby demands a jury trial on all issues in this action.

DATED: May 9, 2008

FISH & RICHARDSON P.C.

By:


John P. Schnurer

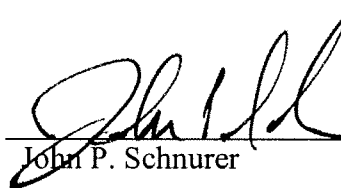
Attorneys for Plaintiffs and Counter-
Defendants ASUSTeK Computer, Inc. and
ASUS Computer International

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served on May 9, 2008 to all counsel of record who are deemed to have consented to electronic service via the Court's CM/ECF system per Fed. R. Civ. P. 5(b)(3). Any other counsel of record will be served by electronic mail, facsimile and/or overnight delivery.

Dated: May 9, 2008

By:



John P. Schnurer

Attorneys for Plaintiffs and Counter-
Defendants ASUSTeK Computer, Inc. and
ASUS Computer International